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Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

GARNES ENGINEERING GROUP, )  
LTD., )

Plaintiff, )

vs. )

KYOCERA DOCUMENT SOLUTIONS )  
NORTHWEST, INC. )

Defendant. )

COPY

Original Received

JAN - 2 2019

Clerk of the Trial Courts

Case No.: 3AN-18-\_\_\_\_\_ CI

COMPLAINT

Plaintiff Garness Engineering Group, Ltd., ("Plaintiff" or "Garness"), by and through counsel, Woelber & Cole, LLC, brings this complaint against Defendant Kyocera Document Solutions Northwest, Inc. ("Defendant"), and states and alleges the following:

**I. PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff is an Alaska corporation in good standing.

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2. On information and belief, Defendant is a Washington corporation in good standing. The Defendant is subject to personal jurisdiction in Alaska under AS 09.05.015(a) (3), (4), and (5).

3. This lawsuit involves the deletion of electronic data belonging to Plaintiff in Anchorage, Alaska. Therefore, the parties are subject to the jurisdiction of this court pursuant to AS 22.10.020, AS 22.15.050 and Alaska R. Civ Pro. 3. Additionally, because the Plaintiff is incorporated and headquartered in Anchorage, Alaska, venue is proper under Alaska Civil Rule 3(c).

## **II. BACKGROUND**

4. On or about the fall of 2016, Intersect Technologies, LLC ("Intersect"), an Alaska limited liability company who performed technical services for Garness, moved Garness' information storage to a cloud service. All Garness' business records were to be stored on a cloud server through Intersect, rather than a local server. This process resulted in the transfer of Garness' proprietary business data electronically back and forth between the cloud service to a local server.

5. At the beginning of 2017, James Taylor ("Taylor"), an employee of the Defendant, began working on problems associated with the service of the Plaintiff's data on the cloud.

6. On or about March 2017, Taylor was charged by the Defendant with deleting Intersect's defunct client accounts. Taylor deleted Garness' proprietary data including its entire cloud account, despite the fact this account was still active.

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7. Upon inquiry, Garness was informed that there was no back-up of its lost data and no possibility of recovering it.

8. Both before and after the loss of data, Taylor represented to Plaintiff and to third parties that he, on behalf of the Defendant, represented the Plaintiff and was working on his behalf to solve the problems. In an email under jttaylor@kdsnorthwest.com, Taylor wrote "Thank you for responding. My name is James Taylor and I represent Mr. Garness for all his IT needs (sic) We did get it resolved today..." See Exhibit A.

9. As a result, Garness lost considerable proprietary business information and records.

### III. CAUSES OF ACTION

#### **COUNT I NEGLIGENCE**

10. Plaintiff realleges and incorporates paragraphs 1 through 9 above.

11. While working on Plaintiff's data, Taylor owed a duty of due care to Plaintiff to provide electronic storage services for Plaintiff's data in a safe and reasonable manner, including the complete preservation of this electronically stored data through a backup or other recovery system.

12. Taylor breached this duty to Plaintiff when he negligently deleted Plaintiff's active electronically stored data account without having a mechanism to restore the deleted data account.

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13. Under the doctrine of respondent superior, Taylor was an employee of the Defendant and acting within the course and scope of his employment when he deleted Plaintiff's electronic data placed in the cloud.

14. As a professional provider of electronic storage services with access to Plaintiff's electronic data, Defendant owed Plaintiff a duty of care to ensure that all Garness' electronic data was backed up before any employee accessed it or tried to modify it.

15. As a professional provider of information technology services with access to Plaintiff's electronic data, Defendant owed Plaintiff a duty of care to ensure that all its employees were properly trained to ensure that they did not access or try to modify a client's stored electronic data without first having in place backup systems to restore accidentally or intentionally deleted data.

16. As a professional provider of information technology services with access to Plaintiff's electronic data, Defendant owed Plaintiff a duty of care to ensure that a process was in place to ensure that its employees only deleted truly defunct accounts and not active client accounts.

17. Defendant breached all of these duties to Plaintiff when its employee deleted or erased all Plaintiff's electronic data stored on the cloud.

18. As a result of Defendant's actions, Plaintiff lost vital proprietary information and caused extensive damages to Plaintiff's business in an amount to be proven at trial, but in any event exceeding \$100,000.00.

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**COUNT II  
NEGLIGENCE RES IPSA LOQUITUR**

19. Plaintiff realleges and incorporates paragraphs 1 through 18 above.

20. Defendant, as a professional provider of information technology services with access to Plaintiff's electronic data, is negligent under the doctrine of *res ipsa loquitur*.

21. It is more likely true than not true that the deletion of Plaintiff's electronic data cloud account would not have occurred unless someone was negligent. The harmful event, in this case the account deletion without backup, was caused by Mr. Taylor as an employee of the Defendant. The account was under his exclusive control at the time of the harmful event.

22. Plaintiff in no way contributed or caused the deletion of its electronic data account.

23. As a direct and proximate cause of Defendant's negligence, Plaintiff sustained extensive damages to Plaintiff's business in an amount to be proven at trial, but in any event exceeding \$100,000.00.

**COUNT III  
BAILMENT**

24. Plaintiff realleges and incorporates paragraphs 1 through 22 above.

25. Plaintiff's electronic data became a part of an involuntary bailment after Intersect made Plaintiff's account available to Taylor and his employer, the Defendant.

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26. Having undertaken the obligation to oversee and preserve Plaintiff's stored electronic data account, the Defendant, through Taylor, failed to fulfill its duties as a bailee to keep Plaintiff's electronic data safe from destruction and backed up.

27. The Defendant's failure to fulfill its duties as bailee is a direct and proximate cause of the damages to Plaintiff's business in an amount to be proven at trial, but in any event exceeding \$100,000.00.

**COUNT IV**  
**UNFAIR TRADE PRACTICES UNDER AS 45.50.471**

28. Plaintiff realleges and incorporates paragraphs 1 through 26 above.

29. The Defendant engaged in unfair or deceptive acts or practices toward the Plaintiff.

30. Defendant represented to Plaintiff through Taylor that he and the Defendant were in all ways qualified to monitor, assist, and protect its electronic data storage on the cloud.

31. The representation described in paragraph 30, above, was false.

32. The Defendant, through its employee, was not qualified to undertake this responsibility and did not understand the significance or importance of having quality control practices to ensure against the deletion of clients' stored electronic data on active accounts.

33. The Defendant, through its employee, were not qualified to undertake this responsibility and did not understand the significance or importance of having backup

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capabilities to ensure against the accidental or intentional deletion of clients' stored electronic data.

34. The Defendant's misrepresentations are the direct and proximate cause of the damages to Plaintiff's business in an amount to be proven at trial, but in any event exceeding \$100,000.00.

35. Under AS 45.50.531, the Plaintiff is entitled to treble damages for the Defendant's violation of Alaska Unfair Trade Practices Ac.

#### IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court grant the following relief:

1. For an award of damages owed to Plaintiff, to be determined at trial, but in any event in excess of \$100,000.00;
2. For an award of attorney fees, interest, and costs as allowed by the Alaska's applicable statutes and civil rules of procedure;
3. For an award of full reasonable attorney fees and costs under AS 45.50.537 for violating Alaska's Unfair Trade Practices Act.
4. For an award of treble damages for violating Alaska's Unfair Trade Practices Act as allowed under AS 45.50.531.
5. For all such other and further relief as the Court deems just and equitable.

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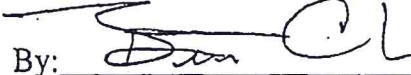
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(907) 277-8002 Facsimile

DATED this 27 day of December, 2018, at Anchorage, Alaska.

WOELBER & COLE, LLC  
Attorneys for Plaintiff

By:   
Brent R. Cole  
AK State Bar No. 8606074

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Jeff Garness

From: James Taylor <jtaylor@kdsnorthwest.com>  
Sent: Monday, July 10, 2017 12:34 PM  
To: Mike Kotloski; Jeff Garness; Chris Edge  
Cc: Jason Fagan  
Subject: RE: Garness Engineering

Mike,

Thank you for the responding. My name is James Taylor and I represent Mr. Garness for all his IT needs We did get it resolved today. The main issue is if we have something like this that happens again we can afford to email support because it goes to China and I found out for like 3 days they had my email marked as spam so they had to put me on the whitelist.

Below is the email conversation. Is there any way we can have a states side support number to call?

Dear Taylor,

Sorry for lateness because your email was blocked by the server. I have added your email into the white list. It is really hard for me to locate the problem by the information you provided.

First of all, please try the temporary license to test and let us know if the problem still bothers: 76DE-QYMF-WZ7A-UC4Z-8BK5-U3P3. If the temporary license still can't help, please give us a screenshot or video showing the problem, that will help us to locate the problem.

Hi Sonal,

Please help this user out to solve his problem, thanks!

Best Regards,

Winsor

Product Consultant | ZWCAD Overseas

32/F Pearl River Tower, No.15 Zhujiang West Road, Tianhe District, Guangzhou 510623, P.R.China

Tel: 86-20-38289780 ext: 626 Fax: 86-20-38288676 This message (including any attachments) contains confidential information intended for a specific individual and purpose, and contains very sensitive corporate information that is protected by law. If you are not the intended recipient, you should delete this message. Any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited.

----- Original -----

From: "James Taylor" <jtaylor@kdsnorthwest.com>;  
Date: Sat, Jul 8, 2017 11:46 PM  
To: "tech@zwcad.com" <tech@zwcad.com>;  
Cc: "americas@zwcad.com" <americas@zwcad.com>;  
Subject: RE: Fw: RE: Return Lic

All,

I have been waiting for a week to have some one help me with this issues. My client has not been able to work on certain material that is need for a job. My client is losing monies can hoi please help me.

James Taylor  
Director of Information Technology  
Kyocera Document Solutions Northwest  
Direct (425) 272-4955  
Cell (206) 445-5119  
Email james.taylor@da.kyocera.com  
www.kdsnorthwest.com

From: James Taylor  
Sent: Wednesday, July 5, 2017 7:09  
To: Winsor Liu  
Cc: Americas  
Subject: RE: Fw: RE: Return Lic

Liu,  
The issues says there is a problem communicating with the lic. Server.

James Taylor  
Director of Information Technology  
Kyocera Document Solutions Northwest  
Direct (425) 272-4955  
Cell (206) 445-5119  
Email james.taylor@da.kyocera.com  
www.kdsnorthwest.com

From: Winsor Liu [mailto:tech@zwcad.com]  
Sent: Tuesday, July 04, 2017 5:45 AM  
To: James Taylor <jtaylor@kdsnorthwest.com>  
Cc: Americas <americas@zwcad.com>  
Subject: Fwd: Fw: RE: Return Lic

Dear Taylor,

I am Winsor, Product Consultant from ZWSOFT, I am really sorry to hear the bad news.

I just got the previous emails from our colleague and I just need to make sure we are on the same page, the emails showing that you have trouble on " the lic installed but when the documents are printed It states trial Lic", and also you trouble to contact our local partner?

For your problem, I can not confirm the problem, I need to get more information so that I can understand the problem you are facing right now, so that we can better help you solve this issue:

"when the documents are printed, it states trail Lic", is this means when users try to print their drawings on ZWCAD, the Lic becomes trail? It happens on all computers or some computers? Or even better can help us, it will be really nice to make a video showing the operation and problem.

If you have trouble to contact to our Partner, please let us know and we will figure out what's going on to our partner, and we will give you an appropriate reply ASAP.

Pierce Blewett

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From: Pierce Blewett  
Sent: Thursday, March 16, 2017 9:45 AM  
To: 'James Taylor'  
Subject: RE: Auto Cad

Not working yet

From: James Taylor [mailto:jtaylor@kdsnorthwest.com]  
Sent: Thursday, March 16, 2017 9:29 AM  
To: Pierce Blewett <Pierce@garnessengineering.com>  
Subject: Auto Cad

Pierce,  
Pease see if you can use AutoCad

James Taylor  
Director of Information Technology  
Kyocera Document Solutions Northwest  
Direct (425) 272-4955  
Cell (206) 445-5119  
Email [james.taylor@ds.kyocera.com](mailto:james.taylor@ds.kyocera.com)  
[www.kdsnorthwest.com](http://www.kdsnorthwest.com)

**KYOCERA**  
INTELLIGENT



Jeff Garness

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From: Jeff Garness  
Sent: Wednesday, March 22, 2017 10:12 AM  
To: Jason Fagan  
Subject: Re: Cloud Workspace Account Lockout Alert

Thanks!

Sent from my iPhone

Jeffrey A Garmess, P.E., M.S.  
President

Garness Engineering Group, Ltd.

On Mar 22, 2017, at 8:07 AM, Jason Fagan <[jfagan@kdsnorthwest.com](mailto:jfagan@kdsnorthwest.com)> wrote:

Already took care of Landon. He is in.

Jason L Fagan  
President

Kyocera Document Solutions Northwest, Inc  
Main - (800) 777-0852  
Direct - (425) 272-4319  
[jfagan@kdsnorthwest.com](mailto:jfagan@kdsnorthwest.com)  
[www.kdsnorthwest.com](http://www.kdsnorthwest.com)

From: Jeff Garness <[jeff@garnessengineering.com](mailto:jeff@garnessengineering.com)>  
Sent: Wednesday, March 22, 2017 11:06:50 AM  
To: Jason Fagan  
Subject: Fwd: Cloud Workspace Account Lockout Alert

Sent from my iPhone

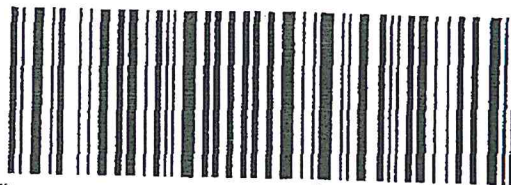
Jeffrey A Garmess, P.E., M.S.  
President

Garness Engineering Group, Ltd.

Begin forwarded message:

From: <[info@intersecttech.net](mailto:info@intersecttech.net)>  
Date: March 22, 2017 at 7:44:04 AM HST  
To: <[jeff@garnessengineering.com](mailto:jeff@garnessengineering.com)>  
Subject: Cloud Workspace Account Lockout Alert

OF THE RETURN ADDRESS, HOLD AT POST OFFICE  
**CERTIFIED MAIL®**



7017 2680 0000 8887 5913

**1**

**\$7.62** US POSTAGE  
3 OZ FIRST-CLASS FLATS RATE

062S0006398689  
FROM 99501

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300 Deschutes Way SW Suite 304  
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